

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DION MACKLIN,

Petitioner,

v.

CLEVERINGA,

Respondent.

No. 2:19-cv-02598-TLN-CKD

ORDER

Petitioner Dion Macklin (“Petitioner”), a state prisoner proceeding *pro se*, has filed an Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 2, 2020, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 15.) Neither party has filed objections to the findings and recommendations.

Accordingly, the Court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed *de novo*. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983); *see also* 28 U.S.C. § 636(b)(1).

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1 Having reviewed the file under the applicable legal standards, the Court finds the Findings
2 and Recommendations to be supported by the record and by the magistrate judge's analysis.

3 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has
4 considered whether to issue a certificate of appealability. Before Petitioner can appeal this
5 decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
6 Where the petition is denied on the merits, a certificate of appealability may issue under 28
7 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a
8 constitutional right." 28 U.S.C. § 2253(c)(2). The Court must either issue a certificate of
9 appealability indicating which issues satisfy the required showing or must state the reasons why
10 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
11 procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that
12 jurists of reason would find it debatable whether the district court was correct in its procedural
13 ruling'; and (2) 'that jurists of reason would find it debatable whether the petition states a valid
14 claim of the denial of a constitutional right.'" *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
15 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000)). For the reasons set forth in the
16 magistrate judge's Findings and Recommendations (ECF No. 15), the Court finds that issuance of
17 a certificate of appealability is not warranted in this case.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. The Findings and Recommendations filed November 2, 2020 (ECF No. 15), are
20 adopted in full;

21 2. Respondent's Motion to Dismiss (ECF No. 11) is GRANTED based on Petitioner's
22 failure to exhaust his state court remedies;

23 3. Petitioner's Application for a Writ of Habeas Corpus (ECF No. 1) is DISMISSED
24 without prejudice;

25 4. The Court declines to issue the certificate of appealability referenced in 28 U.S.C. §
26 2253; and

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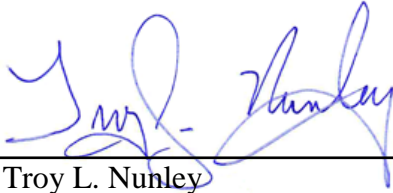
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1 5. The Clerk of the Court is directed to close this case.

2 IT IS SO ORDERED.

3 DATED: December 17, 2020

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Troy L. Nunley
United States District Judge